

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH CLARK,

Plaintiff-Appellant,

v

AMERICAN FAMILY MUTUAL INSURANCE
COMPANY,

Defendant-Appellee,

and

EWA HORODKO,

Defendant.

UNPUBLISHED

August 15, 2006

No. 268002

Oakland Circuit Court

LC No. 05-064812-NI

Before: Whitbeck, CJ., and Hoekstra and Wilder, JJ

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant American Family Mutual Insurance Company. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

This case arises from an accident that occurred in Southfield, involving plaintiff, a Michigan resident, and a motor vehicle leased in Michigan by plaintiff's son, an Illinois resident, but garaged in Michigan. Plaintiff's son had added the vehicle to his Illinois-based insurance policy with defendant American Family, who was not admitted as a no-fault insurer in Michigan.

Plaintiff sought benefits from American Family. After some investigation, the latter denied the claim on the ground that coverage under its policy did not extend to plaintiff. Plaintiff filed suit against both American Family and Ewa Horodko. Plaintiff settled his negligence claim involving Horodko, leaving American family the only defendant participating in this appeal.

The trial court detailed some of the facts:

On October 7, 2003, Plaintiff was the driver of a 2003 Ford Excursion. He became involved in a collision [and allegedly] suffered severe and multiple injuries as a result

... On the date of the accident, the Ford Excursion was insured by American Family under an Illinois policy of liability insurance issued to Damon Clark

Damon Clark is an Illinois resident. On November 15, 2002, he leased the subject vehicle and registered it in his name in Michigan listing the address of his parents, [plaintiff] and Sherry Clark, [in] Southfield. Damon Clark purchased insurance for the vehicle with Defendant American Family, through its agent

From November 2002 through the present time, the Ford Excursion has been garaged at the Southfield home of [plaintiff] and is still registered in Michigan. Damon Clark contends he has kept the vehicle at his parents['] because he regularly conducts business in Michigan and needs a car to drive when he was in town.

Damon Clark testified that about six days a month he comes to Michigan. He claims to have given his father, sister, and mother permission to drive the Ford. [Plaintiff] testified that in some weeks he drove the vehicle on a daily basis.

The trial court held that, because the insurance policy in question covered plaintiff's son's Illinois vehicles, and did not name plaintiff, a Michigan resident, and because American Family was not authorized to write Michigan no-fault insurance, plaintiff was not entitled to PIP benefits from that defendant.

The court also held that plaintiff "was an owner and operator of an insured motor vehicle within the meaning of MCL 500.3101," and thus was "excluded from recovering for noneconomic loss" The court further rejected plaintiff's waiver and estoppel arguments.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). The applicability of a legal doctrine likewise presents a question of law, calling for review de novo. *James v Alberts*, 464 Mich 12, 14; 626 NW2d 158 (2001).

"In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

MCL 500.3101(1) requires the "owner or registrant of a motor vehicle required to be registered in this state" to "maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." Subsection (3) states that such security "may be provided under a policy issued by an insurer duly authorized to transact business in this state," and subsection (4) allows for security "provided by any other method approved by the secretary of state"

MCL 500.3163(1) provides as follows:

An insurer authorized to transact automobile liability insurance and personal property protection insurance in this state shall file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system under this act.

Subsection (2) states that “[a] nonadmitted insurer may voluntarily file the certification described in subsection (1).” Accordingly, “[a]n insurer becomes liable under § 3163 when (1) it is certified in Michigan, (2) there exists an automobile liability policy between the nonresident and the certified carrier, and (3) there is a sufficient causal relationship between the nonresident’s injuries and the ownership, operation, maintenance, or use of a motor vehicle . . .” *Goldstein v Progressive Casualty Ins Co*, 218 Mich App 105, 109; 553 NW2d 353 (1996) (1997).

The accident involved in this case arose from a Michigan resident’s driving of the vehicle, not from “ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle *by an out-of-state resident*,” MCL 500.3163(1) (emphasis added). For these reasons, defendant’s¹ obligations in connection with MCL 500.3163 do not come to bear.²

Plaintiff does not argue that defendant is liable to him under the express terms of Damon Clark’s insurance policy. Plaintiff argues instead that defendant waived its right to deny liability, or stands estopped from doing so, on the ground that certain of defendant’s agents at times gave indications that its insurance would cover this situation.

“Equitable estoppel arises where one party has knowingly concealed or falsely represented a material fact, while inducing another’s reasonable reliance on that misapprehension, under circumstances where the relying party would suffer prejudice if the representing or concealing party were subsequently to assume a contrary position.” *Adams v Detroit*, 232 Mich App 701, 708; 591 NW2d 67 (1998). However, “[t]he application of waiver and estoppel is limited, and, usually, the doctrines will not be applied to broaden the coverage of a policy to protect the insured against risks that were not included in the policy or that were expressly excluded from the policy.” *Kirschner v Process Design Assoc, Inc*, 459 Mich 587, 593-594; 592 NW2d 707 (1999).

¹ Because American Family is the only defendant participating in this appeal, the term “defendant” will hereinafter refer exclusively to that entity.

² Because defendant does not write Michigan insurance, because its certification under MCL 500.3163 does not bring liability in this instance, and because defendant is the only defendant before us, we need not consider whether the trial court correctly ruled plaintiff an owner of a Michigan vehicle lacking the required insurance, for purposes of triggering the exclusion of MCL 500.3113(b).

Paralleling equitable estoppel is promissory estoppel, whose elements are

(1) a promise, (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee, (3) which in fact produced reliance or forbearance of that nature, and (4) in circumstances such that the promise must be enforced if injustice is to be avoided. [*Ardt, supra* at 692 (internal quotation marks and citation omitted).]

“The doctrine of promissory estoppel should be applied cautiously, and “only where the facts are unquestionable and the wrong to be prevented undoubted.” *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 687; 599 NW2d 546 (1999).

Plaintiff protests that defendant’s sales agent should have advised his son of the inadequacy of the Illinois insurance policy in connection with a vehicle leased, garaged, and operated in Michigan. However, “Generally, an insurance agent does not have an affirmative duty to advise a client regarding the adequacy of a policy’s coverage. Instead, the insured is obligated to read the policy and raise questions concerning coverage within a reasonable time after issuance.” *Mate v Wolverine Mut Ins Co*, 233 Mich App 14, 23; 592 NW2d 379 (1998) (internal quotation marks and citation omitted). Silence in this regard, then, “cannot constitute the culpable negligence or intentional act required for equitable estoppel.” *Id.*

Plaintiff protests that certain of defendant’s agents, at various times, indicated that defendant would pay the claim. He cites *Ardt, supra*, in which this Court held that an insurer’s indications to claimants that insurance benefits would be paid upon “the completion of certain formalities” could potentially estop that insurer from later denying payment. *Id.* at 692-693.

But plaintiff acknowledges that defendant sent a reservation-of-rights letter, on October 27, 2003, which expressed the concern that the subject vehicle “is kept in Michigan and is driven by a Michigan resident” who was “not listed as a driver on the insurance policy,” and added that “Michigan is not a state where American Family Insurance issues car policies.” There is no indication in *Ardt, supra*, that the insurer was operating under any such express reservation of rights. In this case, because the occasionally favorable emanations from defendant’s agents to which plaintiff points included no specific withdrawal, or disclaimer, of that reservation or rights, plaintiff’s estoppel or waiver theory must fail. See *Kirschner, supra* at 593.

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder